

JUN 26 2012

Federal Communications Commission  
Office of the Secretary

Before the  
Federal Communications Commission  
Washington, DC 20554

FCC 12M-31

In the Matter of	)	MB Docket No. 12-122
	)	
<b>Game Show Network, LLC,</b>	)	File No. CSR-8529-P
<b>Complainant,</b>	)	
	)	
v.	)	
	)	
<b>Cablevision Systems Corp.</b>	)	
<b>Defendant</b>	)	
	)	
Program Carriage Complaint	)	

**ORDER**

Issued: June 19, 2012 ; Released: June 19, 2012

On June 18, 2012, the non-government parties, Game Show Network, LLC (GSN) and Cablevision Systems Corporation (Cablevision) submitted Conference Memorandums in accordance with the Presiding Judge's June 7 *Order*.<sup>1</sup> It appears from the Conference Memorandums that the parties have estimated time needed for discovery, exchange of expert witness opinions, deposing of experts, and other trial preparation. The respective parties' trial teams have submitted and filed a "numerically agreeable" proposed schedule that they believe would "expedite" trial and substantially meet deadline targets of the *Program Carriage Rules*.<sup>2</sup>

In compliance with the Presiding Judge's *Addendum* to his June 13 *Order* (FCC 12M-28), GSN and Cablevision have agreed to procedural dates, which permit a hearing date for next year on the 28<sup>th</sup> of January. Both parties have also indentified key fact witnesses, and have agreed to procedures for conducting their discovery with civility. The limitations on discovery are jointly established by the parties and "[GSN] will seek the Presiding Judge's intervention in discovery only to the extent necessary to resolve disputes." (GSN Conference Memo at 4.)

<sup>1</sup> *Order* (FCC 12M-28, which was briefly modified, *Addendum* (FCC 12M-29), later reconsidered in an e-mail Ruling of June 14, 2012, reduced to formal *Order* (FCC 12M-30) of June 18.

<sup>2</sup> See *Second Report and Order, Revision of the Commission's Program Rules*, 26 FCC Rcd 11494 et seq., Para 19, released August 1, 2011 (deadlines established for Media Bureau and Presiding Judge Decisions).

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Cablevision has estimated six fact witnesses and explained relevance in addition to furnishing job titles (e.g. senior executives at Cablevision). These and possibly other fact witnesses are proffered as reliable sources of proof to show business reason(s) for Cablevision's decision to move GSN's tier positioning. The substance of the expected fact testimony and its relevance to issues are clearly pinpointed even at this early date.

However, Cablevision questions any need for deposing fact witnesses whose testimony will be reduced to writing and exchanged in advance of taking the witness stand. Cablevision would limit fact witness depositions to three primary witnesses, citing *WealthTV* procedures as a precedent for having few or no fact depositions. Cablevision does expect testifying experts to be deposed. But Cablevision urges that any request to depose over three fact witnesses require a good cause showing. These questions shall be handled *ad hoc*.

Clearly, the parties have the wherewithal to discover with a minimum of supervision. They have already been through thorough pre-designation procedures in which GSN presented a case that justified issuance of an *HDO* requiring a formal hearing with sufficient cross-examination to test witness creditability. Clearly, counsel will not be "learning" the case in discovery.

In addition, both GSN and Cablevision candidly suggest that in light of their Memorandums, a Pre Hearing Conference is not needed. It is noted that (a) prehearing conferences involving multiple attorneys (Enforcement Bureau (EB) also participates) are expensive and both OALJ and EB have budgetary limits, (b) several of non-government counsel must travel from New York City to D.C., an expensive journey to be added to significant legal fees, and (c) all are aware that 21 June is expected to have 90 plus ° temperatures, high humidity, and unhealthy air to breath. The cumulative negatives out weigh any benefits in having a Prehearing Conference in which the main purposes for one are achieved through thorough Conference Memorandums and schedule agreement.<sup>3</sup> Counsel are convincing in showing the lack of a need for a Prehearing Conference at this time.

## RULINGS

Accordingly, IT IS ORDERED that the Prehearing Conference for 21 June 2012 set under *ORDER* (FCC 12M-28) IS CANCELLED *sine die*.<sup>4</sup>

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<sup>3</sup> Even the formal introduction of counsel is offset by the Presiding Judge having had earlier experience in having attorneys from both sides try cases in *WealthTV* and *Tennis Channel*, previous carriage hearings.

<sup>4</sup> The Presiding Judge reserves his authority to call a conference as needs may arise.

IT IS FURTHER ORDERED that an *Addendum* will be issued after further consideration by the Presiding Judge of calendar commitments, status of OALJ's docket, and other factors affecting date selection, and the parties SHALL RECEIVE in due course procedural dates <sup>5</sup> that will be decided upon by the Presiding Judge. <sup>6</sup>

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel

Chief Administrative Law Judge

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<sup>5</sup> Most dates already agreed upon by the parties are expected to be utilized.

<sup>6</sup> Copies of this *Order* were e-mailed to counsel of record on date of issuance.